IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 263 of 2000

with

CRIMINAL MISC.APPLICATION No 265 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DAKSHA N SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 263 of 2000
M/S THAKKAR ASSOC. for Petitioners
MR AJ DESAI, APP for Respondent No. 1
MR BS PATEL for Respondent No. 2

2. Criminal Misc.ApplicationNo 265 of 2000
M/S THAKKAR ASSOC. for Petitioners
MR AJ DESAI, APP for Respondent No. 1
MR BS PATEL for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 27/04/2001

COMMON C.A.V. JUDGEMENT

Cri. Misc. Appln. Nos.263 of 2000 and 265 of 2000 have been filed by the petitioners to quash the complaints being Criminal Complaint Nos.174 of 1999 and 2984 of 1998 pending in the Court of learned Chief Judicial Magistrate, Vadodara.

2. Present petitioners of Cri. Misc. Appln. Nos.263 of 2000 and 265 of 2000 are the accused of Criminal Case Nos.174 of 1999 and 2984 of 1998 respectively and some of the petitioners are the plaintiffs of Special Civil Suit No.102 of 1998 and Regular Civil Suit No.168 of 1998 respectively. Both the suits have been filed by the petitioners against the respondent-complainant and others in the Court of learned Civil Judge (S.D.), Vadodara. They have also taken out injunction application Ex.5 praying for interim injunction which was granted and same has been confirmed vide order dated 30-3-1998 and which was carried in appeal by the original complainant in this Court.

3. This court (Coram: R.Balia,J.) vide order dated 6-5-1998 ordered that the petitioners shall provide separate cover parking space for all the allottees in the Race Course Tower in the common plot. So, the interim order which has been passed by the Court below upon Ex.5 has been made absolute by the Court and again same has been confirmed by the High Court. Both the suits are pending in the Court of learned Civil Judge (S.D.), Vadodara awaiting for final disposal. It is seen that the averments which has been made by the person who has filed the affidavit in the civil suit has been taken into consideration by both the courts and interim order has been made absolute till final disposal of the suit.

4. Mr.P.M.Thakkar, learned counsel for the petitioners has contended that present complaint filed by the complainant is barred under the provisions of Sec.195(1) of Cr.P.C. because this affidavit is allegedly produced before the Court of learned Civil Judge (S.D.), Vadodara and, therefore, learned Chief Judicial Magistrate is barred from taking cognizance as yet, above referred suits have not been finally disposed of by the Court below. He has also raised various contentions namely that if we believe the say of the

original defendants of the suit that offence is arisen from the affidavit filed by the complainant in the above suit, then it has been filed by one person and even then, the present respondent-original complainant has filed the complaint against all the plaintiffs showing them as accused. He has also contended that yet Civil Court has not finally disposed of the suits and, therefore also, these complaint are premature. According to him, the person who has not filed affidavit has also been joined as accused and process has been issued by the court against them also and ultimately, he has prayed to quash the complaint in question on the ground that it is nothing but sheer misuse of the process of law.

5. Learned counsel for the respondent-original complainant, Mr.B.S.Patel has argued at length and at the end he has argued that even Court came to the conclusion that the complaint in question has been filed on the basis of affidavit filed by the plaintiff in the civil suit and in that circumstances, provisions of Sec.195(1) of Cr.P.C. will come to the rescue of present petitioners and hence, respondent-complainant is entitled to submit application into the Court of learned Civil Judge (S.D.), Vadodara praying for filing the complaint against the present petitioners.

6. I have also heard learned APP for the State, Mr.A.J.Desai.

7. It is transpired that along with the civil suits, plaintiffs have filed affidavit in support of the injunction application Ex.5 and making the base of the above affidavit, present respondent-original complainant has filed the above referred two criminal cases in the Court of learned Chief Judicial Magistrate at Vadodara stating that the affidavit which has been filed by the complainant in support of injunction application Ex.5 prima-facie discloses criminal offence and after verification, process has been issued by the learned Chief Judicial Magistrate and, therefore, present Cri. Misc. Applications have been filed by the present petitioners-original plaintiffs of the above referred suits under Sec.482 of Cr.P.C. raising various contentions mainly that the above mentioned civil dispute was contested before this High Court and at no point of time, the respondent herein-original complainant has raised dispute that the petitioners have filed false and fabricated affidavit. On the contrary, taking into consideration the plaint, injunction application and affidavit filed by the plaintiff, Court has granted ad-interim injunction which has been made absolute till

final disposal of the suit and later on it has been confirmed by the High Court and it is just to pressurise the original defendant, plaintiffs have tried to misuse the process of law.

8. It is established from the record and proceedings and from the arguments of the learned counsel for the respective parties that though the complainant has filed the complaints raising various contentions, facts remain that the complaints in question have been filed on the basis of the affidavit filed by the plaintiffs into the civil suit in question and relying upon all aspects of the matter including the affidavit in question, Court below has granted ad-interim injunction and same has been made absolute after hearing the learned counsel appearing for the respective parties and it has been confirmed by this court and civil suits are pending and awaiting for trial. Therefore, it is too early for the learned Chief Judicial Magistrate to jump to the conclusion that prima-facie offence is disclosed in the affidavit in question which is a part and parcel of the civil suits which are pending before the learned Civil Judge (S.D.), Vadodara. If the original complainant feels that any offence has been disclosed, then in that case, he is entitled only to draw the attention of the Court by way of submitting application for taking necessary action against the concerned person in the same Court i.e. in the Court of learned Civil Judge (S.D.), Vadodara. Instead of doing so, he has filed criminal complaints in the Court of learned Chief Judicial Magistrate at Vadodara wherein learned Magistrate has issued process. It is nothing but misuse of the process of law and when interim order has been confirmed by the High court and suits are awaiting for final disposal, the Court should not become the instrument to misuse the same by the interested person. Before issuing process or passing any order in these types of cases, Court should apply its mind and be vigilant. It is true taht though the civil suit is pending, independent criminal complaint is maintainable if offence is arisen independently. Here in this case, the base of the complaint is affidavit for which, yet Court has not given its final verdict and Court may accept the contention of the person who has filed the affidavit at the time of final disposal of the suit. While passing interim order, this court has disclosed the conduct of the learned Chief Judicial Magistrate and, therefore, it is not necessary to repeat it again at this stage. But facts remain that present complaints in the present nature are not maintainable because it is barred by Sec.195(1) of Cr.P.C. and it is a clear case of misuse of the process of law and,

therefore, both the complaints are required to be quashed and set aside along with the process issued on them by the learned Chief Judicial Magistrate with a liberty to the complainant that if at all he wants to draw the attention of the learned Civil Judge (S.D.) regarding the affidavit in question, then he is at liberty to do so by filing application into the said Court.

10. In view of the above discussion, both these Misc. Cri. Applications are allowed. Complaints being Criminal Complaint Nos.174 of 1999 and 2984 of 1998 respectively pending in the Court of learned Chief Judicial Magistrate, Vadodara together with the processes issued on them are quashed and set aside with a liberty to the complainant to file an application for drawing the attention of the learned Civil Judge (S.D.), Vadodara, regarding the affidavit in question and in that event, learned Judge to decide the said application entirely on merits without being influenced by this judgment. It will be open for the parties to raise all the contentions made and canvass all the arguments advanced in these applications before the Court below. Rule is made absolute accordingly with no order as to costs. Record and proceedings are ordered to be sent back to Court below forthwith.

(R.P.DHOLAKIA,J.)
radhan/